

Consumer Panel response to the Commission's Green Paper on the Review of the Consumer Acquis

The Consumer Panel was established under the Financial Services and Markets Act 2000 by the Financial Services Authority to represent the interests of consumers. The Panel is independent of the FSA. The main function of the Panel is to provide advice to the FSA, but it also looks at the impact on consumers of activities outside the FSA's remit. The Panel represents the interests of all groups of consumers.

This is the Panel's response to the Commission's Green Paper on the Review of the Consumer Acquis. We have only commented on those questions that are most directly relevant to the Panel's remit.

Overview

The Panel has consistently supported a high level of consumer protection and we would not therefore have any objection in principle to the idea of a horizontal 'consumer rights' directive. However, we are concerned that any initiative in this field should not prejudice the outcome of the Commission's significant review of existing EU sectoral financial services legislation as discussed in its *Green Paper on Retail Financial Services in the Single Market* of 30 April 2007. In our view, while horizontal legislation has an important part to play, there will always be particular aspects of financial services that can only be regulated on a sectoral basis.

Detailed Questions

Question A1: In your opinion, which is the best approach to the review of the consumer legislation?

We would support either option 1 or 2, subject to the comments in our response to Question A3. We note (Paragraph 2.2) that any follow-up legislative action may wholly or partially exclude the financial sector.

While we cannot express a view without seeing the scope and contents of an actual legislative proposal, we do see merit in integrating any new legislative proposals closely with the Unfair Commercial Practices Directive (UCPD), which of course does apply, with the exception at present of its maximum provisions, to financial services. The Commission will be aware that the UK is moving towards a more principles-based regime for financial services, based on the concept of treating customers fairly, which to some extent reflects the principles of UCPD.

The Panel would not support any changes to the acquis that would reduce the application of the Directive on Unfair Terms in Consumer Contracts to financial services.

The Green Paper discusses possible changes to the directive of consumer goods and guarantees which could address issues of non-delivery. The possible extension of this principle to the field of financial services raises interesting issues which we would be pleased to discuss with the Commission.

The Panel supports financial services sector-specific provisions which go beyond UCPD, where necessary, but in general we see a good case for making consumer rights as consistent as possible across sectors, in the interests of clarity, consistency and enforcement.

Question A2: What should be the scope of a possible horizontal instrument?

We support option 1, that a horizontal instrument should apply to all consumer contracts, whether they concern domestic or cross-border transactions. Again, we see a good case for making consumer rights as consistent as possible, in the interests of clarity and consistency.

Question A3: What should be the level of harmonisation of the revised directives/the new instrument?

We would not support maximum legislation with a mutual recognition clause as a general principle. We would support the use of consistent EU-wide definitions of key terms such as 'consumer', but would prefer a minimum directive to allow for particular situations that exist in individual Member States. A maximum directive covering all provisions would be unnecessarily heavy-handed in that it would discourage innovation.

Question C: Should a horizontal instrument include an overarching duty for professionals to act in accordance with the principles of good faith and fair dealing?

We support option 1 under which a horizontal instrument would provide that under EU consumer contract law professionals are expected to act in good faith. This would strengthen the general provisions of the UCPD. We would not see this as an area where maximum harmonisation would necessarily be appropriate.

Question D1: To what extent should the discipline of unfair contract terms also cover individually negotiated terms?

We would like to see further study of this issue to establish the case for expanding the scope of application of the directive on unfair terms to individually negotiated terms. It may well be that it is difficult for the majority of consumers to negotiate consumer terms, given the imbalance between the parties.

Question D2: What should be the status of any list of unfair contract terms to be included in a horizontal instrument?

We support option 4, with some terms banned completely and with a rebuttable presumption on unfairness applied to others.

Question D3: Should the scope of the unfairness test of the directive on unfair terms be extended?

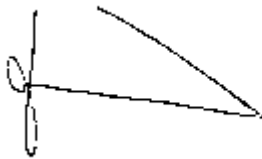
We support Option 1 and the extension of the unfairness test to cover the definition of the main subject of the contract and the adequacy of the price.

Question E: What contractual effects should be given to the failure to comply with information requirements in the consumer acquis?

We support Option 2, with different remedies for breaching different groups of information obligations, and these should include voiding the contract. A hierarchy of three/four remedies might be appropriate in the interests of clarity.

Question F1: Should the length of cooling-off periods be harmonised across the consumer acquis?

We would not support Option 1. Different categories of cooling off periods, as proposed in Option 2, may be more appropriate although having only two categories may be over-restrictive.



Financial Services Consumer Panel

15 May 2007